

GEORGE H. FENTRESS

IBLA 86-1230

Decided October 13, 1987

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting a high bid in a competitive oil and gas lease sale. W-99636.

Affirmed.

1. Accounts: Payments -- Oil and Gas Leases: Competitive Leases --  
Payments: Generally

A single personal check covering four competitive oil and gas lease bid deposits is not an acceptable form of remittance under 43 CFR 3120.4-1, which requires remittances to be submitted in the form specified in the competitive sale notice, when that notice requires bidders to submit separate bids with a bid deposit by guaranteed remittance, i.e., cash, cashier's check, or postal money order.

2. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Discretion to Lease

The Secretary has discretionary authority to reject a high bid for a tract offered at a competitive sale of oil and gas leases where the bid is less than the Government's fair market valuation. Where BLM fails to provide a rational basis for its rejection decision or where the bidder shows that the BLM evaluation is in error, the bidder also has an affirmative obligation to show that the bid it submitted reasonably reflects fair market value in order to be awarded the lease.

APPEARANCES: George H. Fentress, Wheat Ridge, Colorado, pro se; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

George H. Fentress appeals from a decision of the Wyoming State Office, dated April 10, 1986, which rejected his competitive oil and gas lease bid

for parcel 166 (W-99636). BLM concluded that his bid did not comply with 43 CFR 3120.4-1, because his bid deposit was submitted by personal check, and it covered more than one bid.

Appellant bid \$ 6 per acre (\$ 480 total) for parcel 166. Eighty-acre parcel 166 is described as the S 1/2 SE 1/4, sec. 32, T. 46 N., R. 99 W., sixth principal meridian, in the Adam Field Known Geologic Structure (KGS), Hot Springs County, Wyoming. He included the required \$ 96 deposit for this parcel as part of an \$ 828.00 personal check he submitted to cover the one-fifth bid deposits for four parcels in the sale.

The BLM decision stated:

At the April 2, 1986 competitive oil and gas lease sale, you were high bidder on parcel number 166, serial number W-99636. The one-fifth [deposit] you submitted with your bid, in the amount of \$ 828.00, was paid by personal check. In accordance with 43 CFR 3120.4-1, the remittance shall be submitted as specified on the sale notice which said, "Bidders must submit with each bid: (1) one-fifth of the amount bid by guaranteed remittance only, i.e., cash, or cashier's check, or postal money order . . ." (Emphasis added.) Your writing on the check "cash check" does not make it a guaranteed remittance. The check for \$ 828.00 is enclosed.

Since your remittance was by personal check and there was only one check for four parcels, your bid was not in compliance with the regulations and is rejected.

In addition to your remittance being unacceptable, the amount of your bid has been determined to be inadequate. From pre-sale evaluations and the actual bids received, a post-sale analysis was prepared. From that analysis, it was determined that your bid of \$ 6/acre is less than the estimate of value of \$ 50.00/acre.

The notice for the April 2, 1986, competitive oil and gas lease sale specified:

Bidders must submit with each bid: (1) one-fifth of the amount bid by guaranteed remittance only, i.e., cash, or cashier's check, or postal money order, to the Bureau of Land Management; \* \* \*.

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Separate bids must be submitted for each parcel.

In his statement of reasons for appeal to this Board, appellant asserts the rejection was arbitrary and capricious. He concedes that he submitted one personal check to cover the required deposit for his four bids.

However, he objects to the restrictions on the form of remittance in the sale notice, insisting that a personal check is a practical form of payment and is as good as cash. He notes that personal checks are accepted in noncompetitive simultaneous oil and gas lease filings. Appellant also asserts that BLM did not present a rational basis for its conclusion that his bid was inadequate. He insists the tract is not worth \$ 50 per acre and notes he was the only bidder for the tract.

Appellant submitted supplementary information in support of his value of the tract. On a geologic map of the area, appellant marked nearby wells. Both productive and abandoned wells are shown within a mile south and east of parcel 166, all on the north-east side of the Enos Creek anticline. Appellant submitted portions of completion cards for four wells drilled in sec. 5, T. 99 W., R. 45 N., sixth principal meridian: the 1-5 Federal, #1 MacDonald, 5-16 Federal, and 2-5 Dome-Federal wells. He asserts that according to the Wyoming Oil and Gas Commission only one well is currently producing in the Adam Field. Appellant states that it "is believed to be" the 2-5 Dome Federal. He notes also that he obtained an 80-acre tract through the simultaneous oil and gas leasing system "practically the same distance from oil production" as this parcel.

Counsel for BLM insists this bid must be rejected because appellant did not submit his bid deposit in the separate, guaranteed form specified in the sale notice, as required by 43 CFR 3120.4-1. He also asserts the record shows a rational basis for the rejection of appellant's bid. On appeal he provided a copy of the BLM appraisal report prepared before the competitive oil and gas lease sale and approved on May 20, 1986. <sup>1/</sup> The appraisal emphasized the comparable sales method, but also included a discounted cash flow analysis. BLM compared five sales in secs. 5 and 6, T. 99 W., R. 45 N., sixth principal meridian, in the Adam Field, south and east of the subject parcel. BLM judged three of the sales to be too old to indicate current market values clearly. However, two 1985 sales were considered sufficiently recent to give the best indication of market value when adjusted for time. BLM concluded these two sales indicated a \$ 25 to \$ 100 per acre range. Based on a negative discounted cash flow and low economic potential, BLM assigned an estimated appraised market value of \$ 50 per acre as of February 24, 1986. In arriving at that valuation, BLM also examined the well records of the 2-5 Dome Federal and the 1-5 Federal.

[1] "Remittances for competitive bids shall be submitted in the form specified in the sale notice." 43 CFR 3120.4-1. The sale notice, quoted above, called for separately submitted bids. The sale notice required bidders to "submit with each bid" a one-fifth bid deposit "by guaranteed remittance only." Appellant's remittance did not comport with the form specified in the sale notice in two ways; it was not submitted separately with each bid and the remittance was not in guaranteed form.

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<sup>1/</sup> A copy of the appraisal report was forwarded to appellant by counsel for BLM as an attachment to counsel's Reply filed with the Board July 8, 1986. Appellant has not responded to it.

This Board has held that the failure to submit the deposit in the appropriate form must result in the rejection of the competitive bid. Belco Petroleum Corp., 57 IBLA 3 (1981); Mesa Petroleum Co., 37 IBLA 103 (1978). Appellant did not submit his remittance in the form specified in the sale notice, as 43 CFR 3120.4-1 requires. Therefore, BLM properly rejected appellant's bid and returned his personal check.

Appellant insists his personal check is adequately guaranteed because he has in effect relinquished control of the funds his check represents. As we concluded in Mesa Petroleum, supra, use of a form of payment, therein a sight draft, which allowed a bidder to retain use and control of funds until a draft is accepted and paid, would give the bidder an unfair advantage over other bidders who lose control of their funds when using the required form of guaranteed remittance. A personal check is a type of sight draft, payable on demand, but revocable until paid or accepted for payment. 5 Anderson, Uniform Commercial Code, 214 (3rd ed. 1984); U.C.C. §§ 3-104, 3-409(1). As this Board stated in William E. Jeffers, Jr., 46 IBLA 322 (1980):

Not all sight drafts are checks, of course. Under section 3-409(1) of the Uniform Commercial Code the drawee is not liable on a sight draft until he accepts it. This differs from a money order, bank draft, or bank cashier's check most significantly in that it commits no particular fund to the satisfaction of a debt until it is presented and accepted for payment.

Id. at 323; see 6 Anderson, Uniform Commercial Code, 271-274 (3rd ed. 1984). That appellant considers he has given up control of his funds, as a matter of accounting practice, does not change the result. A personal check is not a guaranteed remittance.

Appellant points out that personal checks are permitted in the noncompetitive simultaneous oil and gas lease application system. In that system, such checks are not disallowed by a regulation restricting remittance to a form designated in a notice. See 43 CFR 3112.2-2. Regulation 43 CFR 1822.1-2(b) provides that personal checks are acceptable, except where regulations provide otherwise. The controlling regulation here, 43 CFR 3120.4-1, provides otherwise by incorporating sale notice requirements. 2/

[2] Even if appellant had submitted his remittance in an acceptable form, his bid would have been properly rejected by BLM as inadequate. The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease if the bid is deemed inadequate. 30 U.S.C. § 226(b) (1982); 43 CFR 3120.5(a); Suzanne Walsh, 94 IBLA 249 (1986);

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2/ The sale notice requirement that bid deposits must be submitted in cash, cashier's check, or money order is consistent with longtime practice in Federal oil and gas competitive bidding procedure. See 43 CFR 3120.1-4(b) (1982).

Read & Stevens, Inc., 93 IBLA 61 (1986); Michael Shearn, 87 IBLA 168, 169 (1985). A BLM decision rejecting a high bid will be affirmed where there is a rational basis for the conclusion that the high bid does not represent fair market value for the parcel. Suzanne Walsh, *supra*; Clarence Sherman, 82 IBLA 64, 65 (1984); Viking Resources Corp., 80 IBLA 245, 246 (1984). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases, and the Secretary reserves the right to reject a bid which will not provide a fair return. Viking Resources Corp., *supra* at 246; Coquina Oil Corp., 29 IBLA 310, 311 (1977). Even where BLM fails to provide a rational basis for rejection or where the bidder shows that the BLM evaluation is in error, the Board must also be satisfied that the bid reasonably reflects the fair market value of the parcel in order for the lease to be awarded to the high bidder. Burton/Hawks, Inc., 98 IBLA 118, 122 (1987).

The Department is entitled to rely on reasoned analysis by its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Southern Union Exploration Co., 97 IBLA 322, 325 (1987). If a record indicates a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, that decision will not be reversed, even though the determination may be subject to reasonable differences of opinion. Read and Stevens, *supra* at 67; see Kerr-McGee Corp. v. Watt, 517 F. Supp. 1209, 1213-14 (D.D.C. 1981).

Appellant contends that BLM did not provide a rational basis for its determination that his bid was inadequate. To the contrary, the appraisal report, a copy of which was supplied to appellant, provides a rational basis for finding appellant's bid inadequate. Appellant and BLM considered the same well records; however, appellant did not address comparable sales within the Adam Field which BLM utilized in its appraisal report. Instead, he compares parcel 166 with a tract outside the KGS that he obtained through simultaneous filing procedures. He has failed to show any error in BLM's evaluation of the parcel.

Because appellant was the sole bidder for this tract, he concludes that a lack of competitive interest in the parcel indicated a low market value. However, there is not necessarily a direct relationship between lack of bids and fair market value of a parcel at a competitive oil and gas lease sale. Factors such as limited financial resources, a lack of significant data, and the speculative nature of a tract, as well as intrinsic parcel value, can affect the number of bids received. A lack of competitive interest may offer little evidence of actual fair market value. Edward L. Johnson, 73 IBLA 253, 256 (1983).

Appellant has not shown that the BLM estimate was inaccurate or that his bid represented fair market value. Accordingly, we find the record supports the rejection of appellant's bid as inadequate.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

Bruce R. Harris  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Will A. Irwin  
Administrative Judge

